

(b) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 391.2(b), and the cost of living increases and percentage of inflation factors set forth in § 391.2(c).

[76 FR 20228, Apr. 12, 2011]

§ 391.5 Laboratory accreditation fees.

(a) The annual fee for the accreditation and maintenance of accreditation provided pursuant to § 439.5 of this chapter shall be \$5,000 for the first analyte class, \$2,900 for the second analyte class, and \$2,100 for each additional analyte class.

(b) Laboratories that request special onsite inspections shall pay FSIS the actual cost of reasonable travel and other expenses necessary to perform the unscheduled or non-routine onsite inspections.

[58 FR 65269, Dec. 13, 1993, as amended at 59 FR 66449, Dec. 27, 1994; 64 FR 19868, Apr. 23, 1999; 71 FR 2143, Jan. 13, 2006; 76 FR 20228, Apr. 12, 2011; 78 FR 59622, Sept. 27, 2013; 79 FR 56238, Sept. 19, 2014]

PART 392—PETITIONS FOR RULEMAKING

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AUTHORITY: 5 U.S.C. 553(e), 7 CFR 1.28.

SOURCE: 74 FR 16107, Apr. 9, 2009, unless otherwise noted.

§ 392.1 Scope and purpose.

This part contains provisions governing the submission of petitions for rulemaking to the Food Safety and Inspection Service (FSIS). The provisions in this part apply to all rulemaking petitions submitted to FSIS, except to the extent that other parts or sections of this chapter prescribe procedures for submitting a request to amend a particular regulation.

§ 392.2 Definition of petition.

For purposes of this part, a “petition” is a written request to issue, amend, or repeal a regulation administered by FSIS. A request to issue, amend, or repeal a document that interprets a regulation administered by FSIS may also be submitted by petition.

§ 392.3 Required information.

To be considered by FSIS, a petition must contain the following information:

(a) The name, address, telephone number, and e-mail address (if available) of the person who is submitting the petition;

(b) A full statement of the action requested by the petitioner, including the exact wording and citation of the existing regulation, if any, and the proposed regulation or amendment requested;

(c) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant information and views on which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner’s position. The statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem.

§ 392.4 Supporting documentation.

(a) Information referred to or relied on in support of a petition should be included in full and should not be incorporated by reference. A copy of any article or other source cited in a petition should be submitted with the petition.

(b) Sources of information that are appropriate to use in support of a petition include, but are not limited to:

- (1) professional journal articles,
- (2) research reports,
- (3) official government statistics,
- (4) official government reports,
- (5) industry data, and
- (6) scientific textbooks.

(c) If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in

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a peer reviewed scientific or technical journal.

(d) If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods.

§ 392.5 Filing procedures.

(a) Any interested person may file a petition with FSIS. For purposes of this part, an “interested person” is any individual, partnership, corporation, association, or public or private organization.

(b) To file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk, Department of Agriculture, Food Safety and Inspection Service, Room 2534 South Building, 1400 Independence Ave., SW., Washington, DC 20250-3700.

(c) Once a petition is submitted in accordance with this part, it will be filed by the FSIS Docket Clerk, stamped with the date of filing, and assigned a petition number. Once a petition has been filed, FSIS will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and the Agency contact for the petition. The petition number should be referenced by the petitioner in all contacts with the Agency regarding the petition.

(d) If a petitioner elects to withdraw a petition submitted in accordance with this part, the petitioner should inform FSIS in writing. Once a petition has been withdrawn, the petitioner may re-submit the petition at any time.

§ 392.6 Public display.

(a) All rulemaking petitions filed with FSIS, along with any documentation submitted in support of a petition, will be available for public inspection in the FSIS docket room and will be posted on the FSIS Web site at <http://www.fsis.usda.gov/>.

(b) If FSIS cannot readily determine whether information submitted in support of a petition is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put

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on public display. If the petitioner fails to submit the certification within a time specified by FSIS, the Agency will consider the information to be confidential.

(c) If FSIS determines that a petition, or any documentation submitted in support of a petition, contains information that is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner an opportunity to withdraw the petition or supporting documentation, or modify the supporting documentation to permit public disclosure.

§ 392.7 Comments.

(a) Any interested person may submit written comments on a petition filed with FSIS.

(b) Comments on a petition should be submitted within 60 days of the posting date of the petition and should identify the number assigned to the petition to which the comments refer.

(c) FSIS will consider all timely comments on a petition that are submitted in accordance with this section as part of its review of the petition.

(d) All comments on a petition will become part of the petition file and will be available for public inspection in the FSIS docket room and posted on the FSIS Web site at <http://www.fsis.usda.gov/>.

(e) Any interested person who wishes to suggest an alternative action to the action requested by the petition should submit a separate petition that complies with these regulations and not submit the alternative as a comment on the petition.

(f) If FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. The Agency will take no further action on the requested alternative action unless the commenter submits an appropriate petition for rulemaking.

§ 392.8 Expedited review.

(a) A petition will receive expedited review by FSIS if the requested action is intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products.

(b) For a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne patho-

gens or other potential food safety hazards that are likely to be present in or on meat, poultry, or egg products, and how it will do so.

(c) If FSIS determines that a petition warrants expedited review, FSIS will review the petition ahead of other pending petitions.

§ 392.9 Availability of additional guidance.

Information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site at <http://www/fsis.usda.gov/>.